

New Zealand's boardroom blues: Time for quotas

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Abstract

Gender inequality in boardrooms remains a stubbornly pervasive feature of the story of women in New Zealand. Despite benchmarking and monitoring, a flurry of initiatives and the introduction of policy panaceas such as gender diversity reporting, New Zealand languishes near the bottom of the rankings of similar developed countries by percentage of female corporate directors. This article addresses the research question of what strategies should be used to increase women's boardroom representation. It is written from a human rights perspective and examines several underpinning theories of women's demographic and substantive representation. New empirical data shows 'soft' strategies such as voluntary disclosure by listed companies are having limited impact in terms of either demographic or substantive representation. The article concludes by suggesting that potentially unpopular mandated quotas should be considered to cure the boardroom blues in New Zealand.

Key words

women's representation, equality, gender diversity reporting, women on boards, benchmarking, human rights, quotas.

Introduction

Gender inequality does not discriminate between different models of work organisation, the management of work or its governance. It is no respecter of occupational sectors, low or high paid employment, and has proved stubbornly resistant to changing economic patterns and conditions. As Williams (2013) says, it is embedded in both traditional and neoliberal employment environments. 'Women are not calling the shots either in the high-rise or on the ship' (Williams, 2013, p.621). In the New Zealand context, they are certainly not calling the shots in governance, despite scholarship urging the 'feminizing of boardrooms' published 18 years ago (Shilton, McGregor and Tremaine, 1996).

The question of equal opportunities in the boardroom has a particular salience for New Zealand. When she was Prime Minister, Dame Jenny Shipley, the first female head of state, personally committed to improving the status of women on boards of directors as a symbolic mark of women's progress. As a follow-up to the Beijing Women's Conference in 1995 she pledged through the Ministry of Women's Affairs to improve the female proportion of statutory boards to 50 per cent by the year 2000 (McGregor, 2000). The 1995 United Nations Beijing Platform for Action moved beyond a focus on anti-discrimination and embraced a commitment to empowerment. It stated:

Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace (United Nations, 1995).

The high visibility given to the New Zealand Government's promise ensured it was regularly measured when New Zealand reported internationally on developments in progressing women's equality with men, as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Inevitably the focus on women's

progress on state boards drew attention in comparison to the very low percentage of women as corporate directors in the private sector.

The human rights perspective which frames this article is linked to theoretical conceptions of demographic representation and substantive representation. Both of these theories were anticipated by CEDAW and the Beijing Platform for Action. Demographic and substantive representation have been used by feminist theorists (Phillips, 1998; Norris, 2004; Stevens, 2007), primarily in relation to political representation, but also in relation to women's representation in organisational life. The concept of demographic representation suggests that institutions and organisations are unrepresentative because they tend to be drawn from elites. Demographic representation occurs when representation reflects a microcosm of society, free of discrimination. CEDAW requires signatory nations to both promote equality and abolish all discriminatory laws, and to ensure the elimination of all acts of discrimination against women by persons, organisations and enterprises.

The concept of substantive representation relates to representatives acting to ensure that the key interests of any individual or group find a voice. What representatives do is what matters, more than who they are. Rosabeth Moss Kanter's classical investigation of token women and their marginalisation in corporations (Kanter, 1977) has played a central role in organising research on the substantive representation of women (Childs and Krook, 2008). Her 'critical mass' theory suggests that as the numbers of women increase so will their behaviours and influence.

Critical mass theory has been used widely in the women and corporate governance literature, particularly the idea that increasing the number of women to three or more enhances the likelihood that women's voices are heard and that boardroom dynamics change substantially (Kramer, Konrad and Erkut, 2006). Again, CEDAW promotes substantive representation and a mechanism for achieving it. It implicitly suggests that countries who have ratified the convention must move beyond tokenistic representation of women. It urges signatories to use 'special temporary measures' to increase the numbers of women in male-dominated spheres. In this regard the convention relates to theories of critical mass in the gendering of governance.

CEDAW's special temporary measures are given legislative life in the New Zealand Human Rights Act 1993 under s 73, Measures to ensure equality, which suggests that the Act would not be breached and there would not be unlawful discrimination if measures were undertaken in good faith to advance individuals or groups who may need assistance to achieve equality.

The body of literature on female status and representation as company directors has examined the barriers faced by women at access including in corporate recruitment (Oakley, 2000), in progression including the 'glass ceiling' (Hymowitz and Schellhardt, 1986; Lyness & Thompson, 1997) and as a result of homosocial reproduction whereby directors are appointed from a small group of white, educated men (Westphal & Zajac, 1995). Equally there is a distinct literature promoting positive arguments for women's representation in corporate governance (Burke & Mattis, 2000; Burgess & Tharenou, 2002). Other writers claim business impact accrues from more women on boards (Bilimoria, 2000). Companies gain competitive advantage as a result of female presence in the boardroom and female directors champion change for other females in organisations (Mattis, 2000; Sealy, 2008).

This paper focuses on the representation of women in corporate governance and starts with benchmarking. Burke and Mattis (2000), looking at future directions for research on corporate board diversity, said benchmarking was imperative for a number of reasons including 'providing the metrics needed to measure change over time, and to confirm or dispel public perceptions about the extent of progress for women in the arena of corporate governance, and creating change for women' (pp 3-4). As editors of an international collection about women on

corporate boards, they urged researchers to continue with benchmarking activities in addition to theory-building about gender diversity on corporate boards.

Between 2004 and 2012 the New Zealand Human Rights Commission (NZHRC) benchmarked women's representation at the top in the private sector in New Zealand as part of its monitoring function in relation to CEDAW and other international human rights treaties that New Zealand has ratified. Publicity given to the NZHRC's benchmarking helped increase the visibility of the boardroom gender divide. In turn this transparency was a catalyst for women's civil society activity and various policy responses including the New Zealand Exchange's (NZX) rule introduced in 2012 that required major listed companies to report on gender diversity.

This article has three related sections. First, it traces the background since 2004 of the NZHRC's regular monitoring of corporate governance, analysing the impact of the use of these census reports by advocates for change, and identifying the pitfalls and challenges of time series monitoring. Second, it examines new empirical data monitoring the gender diversity reporting of the top 100 listed companies in the first year of the implementation of the NZX's rule. Third, the article argues that the current use of 'soft' strategies to improve the representation of women in boardrooms such as rhetorical advocacy and voluntary disclosure of gender has had little impact. It concludes by suggesting a step change in boardroom gender equality to effect both demographic and substantive representation may only occur with 'hard' strategies, such as potentially unpopular mandated quotas.

The research takes a human rights perspective grounded in the notions of equality between men and women as set out in the Universal Declaration of Human Rights (UDHR) and CEDAW. The universality of concerns about women's representation across the globe requires a greater utility of a human rights framework, given that internationally the framework has been 'at the forefront of recognising the more insidious forms of discrimination, including indirect, systemic and compounded discrimination' (McGregor, 2010). In addition to the traditional problem analysis of much gender equality research, a human rights perspective linked to the UDHR and explicitly set out in CEDAW encourages advocacy and presents preferred solutions.

The research uses mixed methods including personal observation, archival data and content analysis of annual financial reports of the top 100 companies listed on the main board of the NZX. Marshall (1996) suggests that much literature in the gender field appears to have a changed intent and the author acknowledges the political dimension of this research. The first section is written from a personal perspective, as the paper's author was Equal Employment Opportunities (EEO) Commissioner at the NZHRC between 2002-2012 and published the New Zealand Census of Women's Participation at two year intervals five times from 2004-2012. The second section uses empirical data to investigate the nature of gender diversity reporting required for the first time in New Zealand financial accounting, its impact, and the nexus between gender diversity reporting and actual female representation of board directors. The third section looks at the range of possible strategies to close the gender gap in boardrooms. It concludes that the time is overdue for an evidence-based advocacy of quotas linked to theories of demographic and substantive representation of women in corporate governance in New Zealand.

Benchmarking women's progress

New Zealand has an international obligation through its ratification in 1985 of CEDAW to promote the participation of women in governance and professional life. Article 7 of CEDAW

encourages the participation of women in political and public life on equal terms with men. The Human Rights Act 1993 states that the Commissioner has a mandatory function under section 17 of the Human Rights Act 1993 to 'monitor and analyse progress in improving equal employment opportunities in New Zealand' to provide advice and leadership on EEO, to lead the development of codes of best practice and to evaluate through the use of benchmarks the role of legislation, policy and practice.

The EEO Commissioner was a newly established role in 2002, with the NZHRC previously working on women's rights in an *ad hoc* manner. An early frustration in surveying the EEO landscape in New Zealand was the absence of reliable, up-to-date, time series data on women in participation across industry sectors, professional and public life, and particularly in leadership and decision-making. This was identified in a blueprint for action published by the NZHRC (Mintrom and True, 2004). In response to the need for data sets and to validate advocacy, the first *New Zealand Census of Women's Participation* report (McGregor and Ols-son, 2004) was produced by the EEO Commissioner in partnership with Massey University's then New Zealand Centre for Women and Leadership in 2004. It aimed to be a benchmarking tool with nationwide, accurate and verifiable data, allowing for international comparisons and public debate. From the outset it declared the need to encourage appointments of women by reference to Article 7 of CEDAW.

The late Dr Merimeri Penfold, Kuia and a former Human Rights Commissioner, created the identifying strapline for the report, 'What gets counted gets done: He Tātai Tangata Ka Tāea' and a range of influential business, union and civil society leaders publicly backed the 2004 publication. The endorsement of Dame Silvia Cartwright, the Governor General of the day, subsequently became something of a motif for New Zealand's exaggerated self-image as a gender equality leader. She said:

New Zealand and international media have focused on the perceived predominance of women across some of the country's key leadership positions during recent years.... Such attention, however positive, carries the risk of a double-edged sword. It is all too convenient to assume that this profile accurately reflects the status of all professional women.

The census report differed from previously published gender-related, domestic statistical data by adopting a 'show and tell' policy, identifying by name the companies listed on the stock exchange and the percentage and numbers of women on their boards. Naming specific corporates became an international gender research strategy following *Catalyst* reports in the United States which looked at Fortune 500 companies (Catalyst, 1993), Val Singh and Susan Vinnicombe's work in the United Kingdom looking at the FTSE 100 (Singh & Vinnicombe, 2003), and the Equal Opportunity for Women in the Workplace Agency (EOWA) in Australia that first investigated women's leadership and the top 200 companies by market capitalisation and gender in 2002 (Equal Opportunity for Women in the Workplace Agency, 2004).

In New Zealand the first census report included women directors of publicly listed companies, the directors of Crown companies, women in legal partnerships, the number of women academics as professors or associate professors, and Members of Parliament. The report was heavily publicised because the South Island media promoted the EEO Commissioner's concerns at the extraordinarily low number of female professors and associate professors, constituting a miserly 4.5 per cent, at the University of Canterbury and lamenting generally the gender representation of academic staff at top levels of the three South Island universities.

In 2006 the second census report added women's representation in the judiciary, the media, local government, School Boards of Trustees, trade unions and the Defence Forces. Further categories were added in 2008, including a section on Māori women's participation in both

English and Reo, women in the police, in law, and science, as well as more detailed information about women in local government, including female representation on Council Controlled Organisations. In 2010 agri-business and sport were added, along with a small section from the only available data about Pacific women's representation on government appointed boards. The 2012 and latest census report added in a campaign for female representation on the all-male New Zealand Rugby Union Board and looked at the role of women in the Canterbury earthquakes. It also included data on women in the building, construction, and engineering industries, women in medicine, the not-for-profit sector and diplomats.

Some of the categories were reported on once only, while others were regularly benchmarked (corporate governance, law, media, government boards, trade unions, defence, judges, universities). From the second report in 2004 onwards, the Ministry of Women's Affairs supplied data on Ministerial appointments on all statutory bodies, and a number of other government departments and agencies provided information where it was kept, accurate and verifiable. In 2006, an Agenda for Change section was included to promote gender balance in governance, professional and public life through advocacy and target setting. In 2010 the gender pay gap in public service departments was reported on from data supplied and verified by the departments themselves as an additional feature.

A particular feature of the census report was the large numbers of copies printed – 5000 hard copies in 2006. A further 6000 hits were recorded on the Commission's NEON website between 2006 and 2008 (New Zealand Human Rights Commission, 2008). The report was made freely available to the sectors covered. Every board chair received copies for board members, all university council members received copies and multiple copies went to professional women's groups for distribution. Various women's conferences included copies in each participant pack, it was used in schools and tertiary institutions, and tables and figures were made available via the internet for other stakeholders and organisations to use in their own educational material. The census report grew to 144 pages in 2012 and as its print run increased with demand, so did the costs of production, at a time of constrained resources within the Commission.

Use of the human rights framework

The census reports straddled the line between research and advocacy, providing time series data, but urging change, 'naming and shaming' and editorialising at the same time. However, the reports owed their conceptual basis to the human rights framework and all of them included comments from the United Nation's CEDAW committee about New Zealand's progress. In some cases, this was the only widespread publicity that the CEDAW periodic reports to the Government received, given the worrying absence of any parliamentary process or government mechanism in New Zealand for routinely publicising human rights treaty body reports (Human Rights Commission, 2011).

For example, the 2008 census report referred to the CEDAW committee's sixth examination of the New Zealand government, in which it noted the concerns of the National Council of Women, the Māori Women's Welfare League and Pacific Women's Watch (NZ) about the status of women in leadership. The CEDAW committee complained about insufficient statistical data disaggregated by sex in all areas covered by the CEDAW Convention, which made it difficult to assess accurately the situation and progress of different groups. It called on New Zealand to consider using measures such as 'benchmarks, targets, recruitment and support programmes, incentives and quotas' and to 'strengthen its system of data collection...in order to enhance its knowledge base about the actual situation of different groups of women and to track trends over time' (Committee on the Elimination of Discrimination Against Women, 2007, para 21).

It wanted 'concrete action' goals, and time frames to increase women in decision making in local government, politics, the civil service, DHBs, statutory boards and the judiciary, in particular.

In the latest CEDAW Committee report to New Zealand, the weak nature of target-setting for women's progress was addressed. The United Nations Committee said:

While there is cooperation between the Government and the private sector to identify targets for the advancement of women in decision-making positions, the targets, goals and timeframes set are not sufficient and may be a symptom of regression rather than progress in women's representation (Committee on the Elimination of Discrimination Against Women, 2012, par 43).

Concern at the absence of data disaggregated by gender, race and ethnicity has been voiced repeatedly by international human rights treaty bodies, including the CEDAW committee.

Following publication of the 2004 census report, the co-leader of the Māori Party Hon. Tariana Turia and the Māori Women's Welfare League asked whether attempts had been made to report the position of Māori women (McGregor and Fountaine, 2006). In 2008 the NZHRC surveyed iwi authorities and Māori affiliated and owned businesses and requested relevant data from government departments and Māori organisations such as Te Hui Taumata, Federation of Māori Authorities (FoMA) and the Māori Women's Welfare League. The collection and availability of data disaggregated by gender, race and ethnicity remains a continuing challenge to those investigating the status of women in New Zealand.

A personal perspective of the benefits and pitfalls of census monitoring

The next section is my personal perspective (inevitably subjective and open to contestation) as a former EEO Commissioner about the positives and negatives of time series reporting on women's progress. My reflections in this section discuss the 'insider's perspective', employing England's (1994) concept of reflexivity as self-critical, sympathetic introspection, which acknowledges the situated nature of knowledge. This means the researcher is located within the research, and often with multiple functions. In my case the multiple functions included the role of EEO Commissioner, the functions of a researcher gathering and analysing data, and also subsequent activities as an advocate for change. This paper now extends the insider's perspective to a later evaluation of the impact of the research activity and advocacy for which it was used, providing a self-conscious analytical scrutiny (England, 1994). Insider research is a growing feature of human rights praxis and has an epistemological commitment to research with a change intent (Marshall, 1996).

Burke and Mattis (2000) suggest that benchmarking helps drive forward both the pace of change and scholarly dialogue. The positives I have identified from 10 years of monitoring women's representation and publishing the results include awareness-raising and civil society and sector follow-up using metrics and the accompanying advocacy. The census reports filled a significant information gap given the scant progress New Zealand appears to have made in regularly publishing free and accessible gender disaggregated data over time. The publications also helped counter rhetorical and anecdotal enthusiasm about New Zealand's 'remarkable' gender progress with the provision of accurate figures that have often contradicted public perceptions. They have been used as valid and reliable data sources by the media, cited internationally in gender indexing, and used by women's civil society and by academic researchers. The census report was referred to by the then Minister of Women's Affairs, Hon. Lianne Dalziel, when she appeared before the United Nations Committee on the Elimination of Discrimination Against Women in New York in 2007. The Minister said, 'it had been that study that had cast a spotlight on the appallingly small proportion of women in management and leader-

ship positions in the private sector' (Committee on the Elimination of Discrimination Against Women, 2007, p.5).

Second, transparency of low participation and benchmarking of data every two years encouraged and supported particular sector groups to mobilise around women's leadership. One example is the New Zealand Women in Leadership (NZWiL) programme for senior female academic and general staff from all eight New Zealand universities which has graduated over 220 women since 2007 (Ramsay, McGregor and McCarthy, 2014). The census report data was used by three partners including the Commission to convince influential vice-chancellors to endorse the development of the national leadership programme for university women, which was financially supported by the Kate Edger Educational Charitable Trust. Other examples include the use of the census report by the New Zealand Institute of Chartered Accountants as a platform for comment on the industry's 26% average gender pay gap in 2012, and continuing data-gathering by the New Zealand Council of Trade Unions (CTU) women's group to remind others in the trade union movement of the need to monitor female representation as delegates and members of national executives, at a time of increasing feminisation of union membership, around 60 per cent in 2012.

The negative implications of the NZHRC benchmarking relate to increased resourcing and to its political reception. The first census report was a relatively slight document notable for its pages of endorsements and its boardroom gender diversity analysis. However, women's groups and sector organisations saw its potential as a benchmarking tool and approached the Commission wanting additional professions or sectors to be included. Compilation of the document therefore became increasingly resource intensive. To retain credibility the 'show and tell' publishing requires 100 percent accuracy. Up to five levels of verification activity with the New Zealand Exchange and companies themselves was undertaken by a small unit within the Commission at a time of growing international treaty body reporting workload. Massey University ceased to be involved as researchers from 2008 onwards.

As the census report became better known, there was a greater political pushback about the inclusion of its advocacy sections which criticised inaction by successive administrations. This was particularly apparent in 2010 when a piece was published called *The elusive target of 50/50*, looking back over the previous 22 years at political promises and comments relating to New Zealand's commitment at the time of the Beijing Platform for Action in 1998 to gender balance on all government-appointed boards by the year 2000 (New Zealand Human Rights Commission, 2010). The highest New Zealand achieved was 42 per cent women's representations and in 2010 had slipped slightly to 41.5 per cent. Senior officials of the Ministry of Women's Affairs, responding to pressure from the then Minister Hon. Pansy Wong, disputed the Commission's use of the word 'target', espousing the view that much softer aspirations with weaker political accountabilities had historically been promised.

The commentary on the elusive target remains a valuable summary of political promises around the idea that gender equality assumes 50 per cent, according to the spirit and letter of Article 7 of CEDAW. The negative ministerial reaction provoked tension between me as the EEO Commissioner and officials at the Ministry of Women's Affairs as a consequence, proof of Holton's (2005) contention that targets are an 'explosive issue.' It may also reflect growing political sensitivity by the Ministry and an increase in public relations activities. In her personal reflection on the MWA, feminist economist Prue Hyman notes a 'push for visibility' by the Ministry which 'seems to amount to blowing its own trumpet in letters to women's groups, annual reports, and statement of intent' (Hyman, 2010a, p. 42).

The Human Rights Commission has consistently called for target-setting in women's representation. In the 2008 Agenda for Change section of the census report the Commission called

for targets for women in the police following critical comments by Dame Margaret Bazley in her report of the Commission of Inquiry into Police Conduct relating to the very low numbers of women at the top of the police. The same census report also called for the Minister of State Services to set a benchmark for the State Services Commission to achieve gender parity in chief executive appointments in five years (New Zealand Human Rights Commission, 2008). The current EEO Commissioner, Dr Jackie Blue, has called for targets to be set across the public service and within each department to ensure EEO goals are realised. She says that ‘targets focus the mind and mean that conversations happen’ and that targets should aim to eliminate gender and ethnic pay gaps completely (*New Zealand Herald*, June 25, p. A17).

Gender diversity reporting

Corporate Women Directors International (2011) identified three global strategies currently utilised to improve women’s representation, both demographic and substantive. These are: government-mandated quotas; the emergence of male corporate leaders as champions; and the reporting of board diversity in corporate governance codes.

New Zealand’s seemingly widespread cultural antipathy to quotas has been well canvassed (New Zealand Census of Women’s Participation, 2012, p.7). Quotas are the predominant European strategy, and since Norway passed its quota law in 2003, Spain, France, Iceland, Italy, the Netherlands and Belgium have followed with legislated targets (New Zealand Human Rights Commission, 2012). Whelan and Wood (2012) state that quotas have not affected the quality of female appointments, nor have they negatively impacted on company performance. Legislative quotas are usually non-negotiable and failure to achieve them carries sanctions. Quotas are again discussed at the end of this article.

Elite men urging greater boardroom diversity has long been a feature of the domestic corporate governance debate. For example, former Prime Minister Rt Hon Jim Bolger endorsed the first census report as the then chair of New Zealand Post, stating that benchmarking would be a catalyst for positive change towards equality and diversity and of ultimate benefit to the New Zealand economy (McGregor and Olsson, 2004, p.3). Eight years later, the 2012 census report stated that male champions of board diversity in New Zealand included the Chief Executive of the Auckland Chamber of Commerce, Michael Barnett, and Peter Townsend, Chief Executive of the Canterbury Employers’ Chamber of Commerce (New Zealand Human Rights Commission 2012, p.9).

More recently the preferred policy intervention to increase women’s representation on private boards has been gender diversity reporting in corporate governance. New Zealand followed the examples of Australia (2011), the United Kingdom (2010) and at least 13 other countries since 2003 (New Zealand Human Rights Commission, 2012). In the 2010 census report, the New Zealand Human Rights Commission urged that ‘the New Zealand Exchange (NZX) monitors the Australian Stock Exchange’s new gender diversity reporting regime’, with the aim of following suit in 2012 (New Zealand Human Rights Commission 2010, p.87). In Australia the Sex Discrimination Commissioner in the Australian Human Rights Commission, Elizabeth Broderick, the equivalent of New Zealand’s EEO Commissioner, had been an influential driver of change in gender diversity reporting. Her visit to New Zealand for the *Place at the Table* forum run by the NZHRC and the EEO Trust in 2010 helped raise its profile as a strategy.

Gender diversity reporting, promoted as the alternative to any form of compulsion through government-imposed quotas, has a strong element of public relations and is aimed at improving transparency. Its rationale has usually been tied to the ‘business case’ argument (Bilimoria,

2000), relating to whether women on boards improve the overall financial status and reputation of companies. Proponents often cite research undertaken by large corporates (Eversheds, 2011; Deloitte, 2011 and McKinsey and Company, 2007). It was also attractive to commentators that suggested 'male group think' in board rooms was a negative influence in the global financial crisis, and that risky boardroom behaviour would be tempered by a diversity of perspectives (Association of British Insurers, 2011, p.3).

The New Zealand Exchange (NZX) announced that the gender diversity rule would apply from December 2012. Chair Andrew Harnos stated that there had already been a noticeable increase in diversity of appointments across the listed sector attributable in part to the debate about the impending new rules and advocacy from business groups and business leaders (NZX 2012b). From 1 December 2012, Main Board listed issuers had to include diversity reporting in their annual reports. Issuers with equity securities quoted now need to provide:

- a breakdown of the gender composition of the boards of Directors and Officers; and
- if they have a formal diversity policy, an evaluation of their performance with respect to it, in annual reports covering balance dates ending on or after 31 December 2012.

Inevitably the introduction of the new rule drew a variety of responses. It was welcomed by Mighty River Power chair Joan Withers as raising awareness about gender diversity. She had been pivotal in the formation of the 25 Percent Group, comprising business leaders in the public and private sectors, which announced female participation on their boards would be 25 per cent by 2015. The 25 Percent Group was based on similar overseas initiatives such as the 30 Percent Club in the United Kingdom, but with lower aspirations. EEO Trust chair Michael Barnett said if there was a good education process alongside the new requirement it would become the norm rather than the exception (Best and Rotheram, 2012).

However, the rule was also criticised for being a watered down version of what was required in Australia (New Zealand Human Rights Commission, 2012, p.9). The guidance note issued by the NZX told companies that the new listing rules 'do not *require* an issuer to adopt a diversity policy.' (NZX, 2012a). Global Women's chair, Dame Jenny Shipley, welcomed the rule but said it was a missed opportunity to match Australia's progress while New Zealand Council of Women president Elizabeth Bang called the NZX rule a 'half step' (New Zealand Human Rights Commission, 2012). The New Zealand Shareholders Association criticised the NZX for covering only gender in the diversity listing rule. The NZHRC, in a submission to the NZX about the rule, said that the absence of a requirement to have a gender and diversity policy in the first place and to set measurable objectives, which were critical positive components of the Australian rules, could potentially reduce the effectiveness of the New Zealand initiative (New Zealand Human Rights Commission, 2012).

Has gender diversity reporting increased female board representation?

In this section new empirical data is reported on and analysed from the first year of gender diversity reporting. While it is still early days for diversity reporting in New Zealand, some conclusions are drawn from the data that relate to the current strategies being used to further gender equality in terms of both demographic and substantive representation. The gender diversity reporting results and practices of the top 100 companies by market capitalisation listed on the NZX were examined. Data was gathered in a variety of ways through information provided by the NZX and from company websites. Both hard and soft copies of annual reports of each company were compiled, coded and checked. Correspondence by email and letter was undertaken with some companies when verification was required. The methodology followed that used by the NZHRC when compiling the census report data, for comparative consistency.

In addition, qualitative analysis of how companies reported their gender composition of boards and officers and details of diversity policies is reported on here. Two top 100 companies stated that they had not complied with the NZX's rule, one through oversight. The other company said it had assumed that the photos of an all-male board contained in its annual report was sufficient disclosure of gender composition without it having to provide text that there were no women on its board.

Data shows that the first year of gender diversity reporting has not increased the overall percentage of women on boards of the top 100 in New Zealand, which has remained the same as the previous year, prior to the introduction of the reporting rule. There was, however, an increased number of companies with women on their boards and an increase in female-held directorships.

Table 1: Female Directors of NZX Top 100 Companies (2012, 2010 & 2008 data from Census reports)				
	2013	2012	2010	2008
Percentage of women on boards	14.75%	14.75%	9.32%	8.65%
Percentage point increase		5.43%	0.67%	
Female-held directorships by number	95	90	58	54
Companies with female directors by number	61	55	43	40

Seven of the boards were chaired by women and only four companies had equal numbers of male and female directors. Three of these four companies are fund companies associated with Carmel Fisher, a long-time proponent of boardroom gender balance. The fourth company that has achieved gender balance is Lower Hutt's Steel and Tube, chaired by prominent businessperson, Sir John Anderson, with three women at the top table. Steel and Tube, New Zealand's largest distributor of steel and allied products, has a consistent record of boardroom gender diversity, appointing its first woman to the board in 2006.

Only seven companies had three female board members. In recent years women's NGOs have campaigned on the Women's Empowerment Principles (WEPs) as part of a global campaign by UN Women asking Chief Executive Officers (CEOs) of major companies, many with a New Zealand footprint, to commit to public statements of support for gender equality. One of the principles that 18 New Zealand CEOs have signed up for refers to boardroom diversity. The WEPs ask CEOs to 'assure sufficient participation of women – 30 per cent or greater – in decision-making and governance at all levels and across all business areas', an acknowledgment of critical mass theory (United Nations Women, 2011).

Table 2: Top 100 NZX Companies, 2013	
Number of female chairs	7
Number of companies with gender equal boards	4
Number of companies with three female board members	7
Number of companies with two female board members	21
Number of companies with one female board member	32

The results show that the mandatory reporting of the gender composition of boardrooms has had little effect on the appointment of more women to boards in its first year. The NZX rule is yet to prompt the required step change in increased gender diversity in corporate governance. Unlike the Australian experience, where the publicity given to the introduction of gender diversity reporting rules prompted early adopter companies to appoint their first or second woman to boards to 'show' gender diversity, New Zealand companies, specifically the 39 of the top 100 without women, have not changed boardroom recruitment to increase the number of women. A year's time frame is too limited a period to judge the overall effectiveness of the new rule, but early evidence shows that New Zealand is making incremental and unspectacular progress in female appointments, as it was before the rule was introduced. The NZHRC calculates that at the current rate of progress for women in corporate governance (14.75 per cent female), it will be another 35 years before boardroom gender equality is achieved (New Zealand Human Rights Commission, 2012). While New Zealand has committed, through its international human rights treaty ratification, to the conceptualisation of demographic representation, it is a long way from achieving it.

The tone and tenor of comments by some major top 100 companies when publicising boardroom gender composition in their annual reports is disappointing and misogynist. Table 3 located at the end of this article cites the annual reports in the order of their use. Analysis of the text of annual reports demonstrates in several cases a remarkable similarity of explanation as to why there are no women on their boards. For example, *Lyttleton Port* of Christchurch states:

With respect to gender diversity, the Board considers that a merit-based approach is the only appropriate approach for selection and promotion of employees and executives, and for determining the composition of the Board, and as such has not set specific targets for gender diversity. At 30 June 2013, the LPC Board consisted of six male Directors and no female Directors.

The Port of Tauranga in its 2013 Annual report stated:

The Board has not set measurable objectives for achieving gender diversity. The Board considers that merit based appointments are the appropriate approach for selection of employees and Directors and as such has not set specific targets for gender diversity. As at 30 June 2013, 18.3% of the Company were female employees. Female representation at senior management level was 20%. There were no female Board members.

The two port companies were not the only ones to use 'merit' in conjunction with reporting that they had no women, as if the two were correlated. *Infratil*, the energy and transport infrastructure company that has 29 per cent woman as employees and 13 per cent women in senior executive positions, but no female board members, used similar language in its annual report.

The retreat to 'merit' as a reactive defence of all-male boards devalues the already established pool of board-competent women capable and available to take up appointments. *Northland Port Corporation* (NZ) by contrast, for example, has two highly qualified and well-respected female board members listed in its 2013 annual report, one of whom chairs the audit and risk committee of the port company. The notion that merit-based appointments yield male-only boardrooms confirms earlier annual reporting scholarship and feminist explanations that company reporting traditionally reveals little about equality for women and often portrays them in inferior roles (Macintosh, 1990; Tinker and Neimark, 1987; Grosser and Moon, 2008). In this way of thinking women are 'clearly' less meritorious and that is why they are absent from the top table, a disclosure of patriarchal attitudes. The statements in annual reports also reveals scant knowledge of, let alone commitment to, the idea of substantive as opposed to *de facto* equality.

Who has diversity policies, who is reporting on them, and how?

The second part of the NZX rule relates to diversity policy reporting. If companies had diversity policies they were obliged to report on them, unlike the Australian ASX rule which adopted a 'if not, why not' disclosure policy. There was no requirement to report if a New Zealand listed company did not have a diversity policy. A majority of top 100 companies in the first year's analysis, a total of 61, had no diversity policy. They were therefore not obliged to report on diversity. More positively, analysis of the top 100 annual reports showed that the rule appears to have encouraged a number of companies to consider introducing new diversity policies, in addition to reporting on gender composition of boards and officers. For example, the *Allied Workforce Group* (AWF) in its 2013 Annual Report stated:

The company does not currently have a diversity policy. However, the Directors are considering the introduction of such a policy, consistent with their belief that a diverse workforce contributes to improved business performance, enhances innovation and enhances the Company's relationship with its customers.

Air New Zealand said it was 'resolutely focussed on diversity across its business and is currently developing a new Diversity Policy which will include measurable objectives'. *PGG Wrightson* was another company who signalled intent to develop a diversity policy, indicating all of its directors and officers were male, while it had 34 per cent female employees.

Fletcher Building Group, *Barramundi*, *Mellicefcare* and *Fonterra* are among those which introduced diversity policies in 2013, while *Fisher and Paykel Healthcare* announced the appointment of the Vice-President-Human Resources as the Diversity Manager. *Trade Me* developed diversity guidelines during 2012 and approved gender diversity objectives for 2013, including that its five person board be 40 per cent female. *New Zealand Oil and Gas* said the Board would establish measurable objectives to achieve gender diversity and reported in 2013 that the Diversity Committee had been established and had met once. It also candidly reported that female representation at director and senior management levels remained at zero, while 47 percent of employees were women. 'Appropriate goals are to be considered for the next financial year'.

The majority of the companies reporting on diversity for the first time did so with minimal comment. There were a number of companies who provided greater detail and a more sophisticated analysis of diversity metrics in their businesses. In the main these were either global companies with a New Zealand footprint or dual listed companies (Australia and New Zealand) with experience of diversity reporting in other jurisdictions. For example, *Chorus*, with three women on its board, reported diversity metrics including age, employee satisfaction, flexible work, gender by role at five levels of organisational grouping, and internal hire rate, and included a 'rookie ratio' that calculated the previous year's new employees by age, ethnicity and gender. *Goodman Fielder's* Diversity Policy stated gender diversity was a priority and listed initiatives such as a pay equity review, mentoring of senior women, and a roundtable forum on gender diversity. It also set measures to benchmark whether progress had been made. The multinational company *Opus* provided graphs by gender, age and profession over 10 years and described the company's commitment to flexibility of conditions of employment, hours of work, care of dependants during illness, accommodation of career breaks, and a 'tradable benefits' scheme. *Nuplex* similarly broke down its 1900 worldwide employees by region, providing the percentage of employees that spoke one of seven languages. It reported fully on directors, officers and staff by gender in New Zealand, demonstrating slight increases in women at higher levels. Multinational banks are another category that have well-developed existing diversity policies and mature reporting processes.

What conclusions can be drawn from the scope and range of the first year of reporting (or not) on diversity policies? Holton (2004), in an analysis of trends in diversity reporting a decade ago, stated that there was little evidence of standards either nationally or internationally and noted the considerable variation when it comes to measuring progress. There was also little evidence of how diversity is communicated to staff. These observations are true of New Zealand's first year of reporting, ten years later. Added to that is the permeability of the definition of 'diversity', which now appears to encompass everything, is ubiquitous in its use in a variety of contexts, and appears to have overtaken the term 'equal employment opportunities' (Holton, 2005). The variability in the scope of diversity also inhibits comparative analysis between companies, with some annual reports only referring to gender diversity, while others, such as *Synlait Milk*, covered the grounds of discrimination of the Human Rights Act 1993, 'gender, age, disability, religion, race, sexual orientation, family circumstances, politics and ethnicity', as diversity characteristics. Diversity characteristics other than gender were only infrequently reported on. Age was more frequently reported than ethnicity. For example, *NZ Refining* indicated that 35 per cent of its workforce was 50 years or over, a sign of the ageing workforce. However, *SKYCITY Entertainment* did make comment on its Pacific leadership development programme.

The positioning of gender diversity information within annual reports was also highly idiosyncratic. *Trustpower*, for example, which records 49 per cent of all staff as female but with no female board members, positioned the material in its sustainability section, between comment on environmental considerations and sponsorship. Others positioned it in what might be more broadly described as corporate social responsibility sections, while some companies placed it in boardroom composition data.

It is also difficult in some cases to identify New Zealand-specific diversity information. For example, *ANZ's* annual report provides a breakdown of gender diversity at four levels below the CEO, at senior management, management and total women in management as well as management for the global 26,000 staff. *Telstra* is another that provides numbers and percentage of women across its entire group of 11,374 people and while the annual reports states that it exceeded its objective of 25 per cent representation of women in executive management and that women accounted for 40 percent of the annual graduate intake, New Zealand data is not disaggregated.

Looking across the New Zealand top 100 companies, there is evidence of at least three degrees of sophistication of gender diversity reporting. These are categorised by the author as the 'minimalist, compliance approach'; the 'existence of a diversity policy approach'; and a 'strategic gender diversity policy approach'.

The minimalist approach involves reporting a basic headcount by gender of directors and officers in one or two lines or in a small table as required by the new rule. The diversity policy approach involves compliance (including headcount), an indication of a diversity policy and reporting on it. The deeper diversity rationale includes both headcount and compliance, but also has a strategic intent. The first two have been discussed above. The 61 companies without a diversity policy are largely concentrated in the first category and the majority of those reporting on a diversity policy are in the second category.

A small number of companies demonstrate from their annual reports a higher level of espoused commitment to the strategic benefits of diversity. These companies often linked diversity to governance, such as *Auckland International Airport*, which listed measurable objectives in place for achieving diversity as one of its Board's primary governance roles. The airport company indicated that it is:

Strongly supportive of increasing diversity in corporate governance. The company's diversity policy expresses the view that diversity encompassing differences that relate to gender, age, ethnicity, disability, religion, sexual orientation and cultural background, assists us in developing organisational capability to leverage as a resource.

Other examples linked diversity to shareholder value, such as *Kiwi Income Property Trust*, who said that 'diversity adds significant benefit to our organisation and the value we generate for shareholders' and also set out the objectives of its diversity approach as: 'diversity in thought and leadership; recruitment, selection and work practice policies, and respect and inclusion. *Telecom* was another to link diversity to the delivery of:

Enhanced business performance – this includes building diversity of thought within the Board of Directors. Diverse backgrounds, gender, age, experience and perspectives are critical to building a high performance business better able to solve problems and implement new ideas.

Further research could usefully track whether rhetorical commitment is manifest in workplace practices.

Reviving the debate about quotas

It might be anticipated that the widespread business and mainstream media publicity given to the absence of women on boards plus the new NZX gender diversity reporting rule as a policy panacea, and the 'flurry of initiatives to advance women in corporate governance' over several years (NZHRC, 2010, p.8) would have resulted in a step change for boardroom gender equality. The 'flurry of initiatives' included the New Zealand Shareholders Association increasing female representation by adding three women to its board, giving it 37 per cent women's representation 'on merit'; a joint initiative by Business New Zealand, the Institute of Directors and the Ministry of Women's Affairs to promote the business case for boardroom women; the EEO Trust's launch of a cross-company mentoring programme and a range of sector-based accelerator and mentoring programmes (New Zealand Census of Women's Participation, 2010, p.8). However, neither media and public interest, nor sector initiatives nor early adoption of the NZX rule have been a circuit-breaker, individually or collectively. New Zealand continues to languish among the bottom of similar developed countries, with less than 15 per cent of corporate board directors who are female. The pattern that can be chronicled in New Zealand since 2004 is one of glacial incremental gain. The idea of parity in boardrooms, linked to demographic representation, has its attractions as an expression of gender equality. Parity in and of itself is not the sole answer. As has been noted by several scholars (Stevens, 2000; Sawyer, 2002), parity does not necessarily mean that female representatives in politics or corporate life will represent gendered concerns or women's issues; rather they will represent the interests of the nation in politics and of shareholders and institutions in corporate life. However, substantive representation by women is inextricably linked to demographic representation.

It is time, therefore, to move to the discourse of quotas as an alternative affirmative action strategy. Stevens (2000) suggests that the aim of quotas is to compensate for a long history in which certain voices have not been adequately heard within governing institutions but she warns that acceptance of the idea will take a radical rethinking of social arrangements.

Advocacy for mandated quotas, and indeed the use of any form of 'temporary special measures' is unpopular in New Zealand. The traditional opposition to quotas stems from the belief that they challenge the principle of merit in recruitment, selection and promotion in the workplace. In the domestic context quotas are seen as antithetical to the nation's cherished myth as a country where a 'fair go' rules, both in aspiration and practice. Fear of 'nanny state' branding (Davison, 2013) and the influence in the wider economic and political context of neo-liberal

thinking and initiatives (Baker, 2012) in New Zealand has inhibited any political championing of quotas. Business leaders, including some prominent women directors (Meier, 2014), tend to oppose quotas because of their non-negotiability and the accompanying legal sanctions both impinge on business autonomy and confound *laissez faire* market economics. Quotas are said to offend against libertarian rights, even though business submits to a vast range of other state prescription and compliance regimes aimed at ensuring economic and societal stability.

At the start of this article, New Zealand's deep-seated self-image as a gender equality and human rights leader internationally was referred to. Countering the illusion with the provision of evidence was one of the motivations for the regular census reports by the Human Rights Commission which has highlighted concerns about women's representation. Of course, New Zealand is not alone in resisting quotas. Corporate Women Directors International (2013) stated that:

In none of the countries where a legal mandate was enacted to open up corporate board seats for women was there an initial embrace from the business community or from some of the very women who stood to benefit from it. Yet, for all the hue-and-cry against quotas, they have proven to be effective in moving the numbers upwards in terms of more women directors being appointed in a relatively short period of time (p.6).

However, where New Zealand is relatively unusual is not in its opposition to quotas, but in its relative silence about them. In Australia there is regularly a fuss about quotas. When Governor-General Quentin Bryce used International Women's Day in 2011 to advocate for quota introduction to improve the representation of women on corporate boards, the media questioned whether she had crossed the line between her vice-regal role and politics (Wright, 2011). Sex Discrimination Commissioner Elizabeth Broderick in 2010 recommended that if progress was not made under the Australian Stock Exchange's diversity reporting rule, the Australian Government should consider legislating to require 40 per cent of both genders on publicly listed companies.

Global evidence shows that quotas are working both in increasing numbers of women and in terms of business performance. The European Commission (2013) states that countries with legislative quotas remain the motor of change, pointing to a doubling of women on boards by percentage in Italy and France, and to the Nordic countries which have introduced 40 per cent quotas of each gender. Gladman and Lamb (2013), in their GMI Ratings of 5,977 companies in 45 countries, confirm that Europe leads the globe on gender-diverse boards. The 2013 Corporate Women Directors International (CWDI) reports that the United States, which had set the bar for boardroom gender diversity for almost a decade, had lost the lead to France with 25.1 per cent of women corporate directors. In terms of business performance, Credit Suisse's (2012) Research Institute report on gender diversity and corporate performance states that in testing the performance of 2,360 companies globally over the last six years analysis, companies with one or more women on the board have delivered higher average returns on equity, lower gearing and better average growth.

It is a truism that New Zealand has been, at significant points in history, a leader in gender equality, and that the country continues to shine in international comparative gender indexes, such as the Global Gender Gap report produced by the World Economic Forum (2013). This leadership in specific areas and at points in history, however, disguises the considerable variability of progress over time and is partially responsible for complacency and recent revisionism about gender equality. It is also equally a truism that enduring systemic and structural disadvantage is prevalent in terms of both demographic and substantive representation of women and in their participation at the top in the workplace. As Hyman (2010b) notes, New Zealand has moved from being a relatively equal society to one of the most unequal in terms of earn-

ings and income, largely because women are predominantly clustered in lower paid occupations and too few are high income earners in senior management or governance positions.

Given that softer voluntary policy responses have not improved women's status in corporate governance, harder interventions such as legislated quotas need to be debated, endorsed and implemented. There is, too, a critical need to keep building theory. Women's representation theory in corporate governance has been largely borrowed from political science, and has been 'long on numbers and short on theory relating to gender diversity in corporations' (Burke and Mattis, 2000, p.5). Burke and Mattis state this is not so much about the salience of the topic or the vitality of the subject matter but is rather due to the relatively short time frame in which academic research has focused on the issue. Better theoretical underpinnings would also assist advocates for change and practitioners in corporations.

For New Zealand to fulfil the promise in corporate governance of demographic and substantive representation, as outlined in the human rights treaties it has signed such as CEDAW, there needs to be renewed political commitment which flows through into legislative change around quotas, policy rethinking and progressive practices. Some of the practical initiatives to accompany statutory quotas to progress change for women could include:

- a continuation of benchmarking of the status of gender diversity reporting and naming of major companies without any women on their boards;
- mobilisation of, and pressure from, feminist civil society such as the UN Women's Group in New Zealand, National Council of Women, and others;
- more focussed attention on gender equality when New Zealand undertakes regular international human rights treaty body reporting;
- an increased number of male and female business champions and greater public relations by the 25 Percent Group;
- a stronger commitment to an education and awareness-raising campaign of gender diversity reporting by the New Zealand Exchange; and
- agreement by the Government to establish a mechanism so human rights treaties and gender equality can be reported back and debated in Parliament thereby increasing the profile of gender equality.

The deep-seated cultural attachment we have to New Zealand as a nation in which a 'fair go' triumphs already, and the antipathy to affirmative action, means an alignment of all these factors will be required to provoke change. The NZHRC does not intend to publish a full census report covering corporate governance and a wide range of professions and industry sectors in 2014, although it has continued to analyse the gender pay gap in the public service. The challenge of compiling and providing regular and objective time-series, comparative data may now fall to academic women. Women's civil society has shown it is re-energised, looking at its shadow reporting role around gender equality in recent CEDAW examinations and the most recent Universal Periodic Review (Human Rights Council, 2014) that considered New Zealand's implementation of human rights in 2014. But the power of social activism and professional groups surging from below has yet to crack corporate complacency with any force. For that reason a debate about mandatory quotas, particularly the notion of 40 per cent of male and female representation in board rooms that will resonate with merit champions, and the implications of quotas for the demographic and substantive representation of women, is overdue. Such a discourse will challenge New Zealand's peculiar denial of gender equality in corporate governance.

Biography

JUDY MCGREGOR is the Regional Editor Australasia of the international journal, Gender in Management, and was Equal Employment Opportunities Commissioner at the NZHRC 2002-2012. She has written widely on gender equality, women on boards, women in management, equal pay and women in the aged care sector and women's human rights.

Notes

Information from NZX listed company reports cited in this analysis are written in italics and referenced in Table 3. All data cited was retrieved from: <http://companyresearch.nzx.com>

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Table 3: Data from NZX listed companies' annual reports

Reference / Company Name	Year of report	Pages of report
Lyttleton Port of Christchurch	2013	32-33
Infratil	2013	88-89
Northland Port Company	2013	5
AWF Group	2013	6
Air New Zealand	2013	58
PGG Wrightson	2013	25
Fletcher Building Group	2013	26
Barramundi Limited	2013	23
Metlifecare Ltd.	2013	71
Fonterra	2013	50
Fisher and Paykel Healthcare	2013	107
Trade Me	2013	38-39
New Zealand Oil and Gas	2013	67
Chorus Annual Report	2013	43
Opus	2013	91
Nuplex Industries Ltd	2013	36
Synlait Milk	2013	96
NZ Refining	2012	35
SKYCITY Entertainment Group Ltd	2013	50
Trustpower	2013	6
ANZ	2013	68-69
Auckland International Airport Ltd	2013	118
Kiwi Income Property Trust	2012	24
Kiwi Income Property Trust	2013	no page numbers
Telecom Annual Report	2013	135